

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CARROLL INDEPENDENT SCHOOL
DISTRICT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 4:24-cv-00461-O
District Judge Reed C. O'Connor

**UNOPPOSED MOTION FOR LEAVE TO APPEAR AND FILE
WITHOUT LOCAL COUNSEL**

TO THE HONORABLE DAVID C. GODBEY:

The undersigned counsel, who is admitted to this court, respectfully seeks this Court's leave to participate as counsel in this litigation solely for the purpose of serving as counsel for proposed *amici curiae* the States of California, New Jersey, and Pennsylvania ("Proposed Amici States")¹ without separate local counsel as required under N.D. Tex. R. 83.10(a).

INTRODUCTION

1. Plaintiff Carroll Independent School District, seeks a stay of agency action and a preliminary injunction.

¹ Proposed Amici States intend to file a Motion for Leave to Appear as Amici Curiae on or about June 27, 2024.

2. Defendants, represented by the United States Department of Justice, are the United States of America; Miguel Cardona, in his official capacity as Secretary of Education; the United States Department of Education; Catherine Lhamon, in her official capacity as Assistant Secretary for Civil Rights, Department of Education; the United States Department of Justice; Merrick Garland, in his official capacity as Attorney General of the United States; and Kristen Clarke, in her official capacity as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

3. Under N.D. Tex. R. 83.11, an attorney appearing on behalf of the United States Justice Department is generally exempt from the local counsel requirement of N.D. Tex. R. 83.10.

4. Proposed Amici States are not parties to this action and seek only to file an *amicus curiae* brief in opposition to Plaintiffs' pending Motion to Delay Effective Date and Preliminary Injunction. *See* ECF No. 15. Proposed Amici States do not seek party status or to participate in oral argument, but only to file an amicus brief to provide the Court with useful information to aid the Court in resolving the pending motion. *See, e.g. Lefebure v. D'Aquila*, 15 F.4th 670, 676 (5th Cir. 2021) (granting leave to file a brief as *amici curiae* because courts should grant "motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted.") (quoting *Neonatology Assocs., P.A. v. Comm'r of Internal Revenue*, 293 F.3d 128, 133 (3rd Cir. 2002)). Given the minimal involvement of Proposed Amici States in this matter, the obligations and duties of counsel can be fulfilled without the necessity of local counsel. Further, the time and expense required to locate, screen, and educate local counsel presents a hardship to the Proposed Amici States.

5. Because Defendants to this action will be exempt from the local counsel requirement, granting the same treatment to the Proposed Amici States will not

deter from the Local Rule's goal of permitting the scheduling of hearings on short notice. Furthermore, it is unlikely that the Proposed Amici States will be required to appear at hearings, decreasing the chance of any hardship on the Court if this motion is granted.

6. Accordingly, the Proposed Amici States respectfully seek leave to participate in this litigation without local counsel.

ARGUMENT AND AUTHORITIES

7. As discussed above, Defendants are already exempt from the local rule requirement. Under N.D. Tex. R. 83.11, unless the presiding judge directs otherwise, an attorney appearing on behalf of the United States Justice Department shall be exempt from the local counsel requirement of N.D. Tex. R. 83.10.

8. As such, no additional delay will result from granting the requested relief. As any hearing on short notice will require that other counsel also travel, no additional delay will come from counsel for the Proposed Amici States traveling to attend any hearing.

9. Moreover, counsel for the Proposed Amici States are not requesting to argue or participate in any hearing, but they also certify to the Court that they will be available for hearings called on short notice, including emergency hearings that may need to be held within twenty-four hours notice. The undersigned is a Deputy Attorney General and resides within 25 miles of two major airports: Oakland and San Francisco International airports, both of which have direct approximate three-hour and thirty minute flights to the Dallas/Fort Worth International Airport.

10. The undersigned is admitted to the Northern District of Texas and has significant experience in using the CM/ECF system in multiple federal courts. The undersigned has also reviewed and is familiar with the Local Rules of the Northern District of Texas and is prepared to abide by its rules and procedures.

11. As such, granting the relief requested will comport with the purpose of Local Rule 83.10 that counsel be present and available to argue a party's position at any hearing called by the presiding judge on short notice.

12. On June 10, 2024, the Northern District of Texas, Amarillo Division granted Proposed Amici States request to appear without local counsel and file an amicus brief in *Texas v. United States* (No. 2:24-cv-86-Z), a case also involving a challenge to the Title IX Final Rule. (ECF No.34).

13. Pursuant to Local Rule 7.1(h), counsel for California has conferred with counsel for Plaintiff and Defendants regarding the relief requested here. They do not oppose this motion.

PRAYER AND CONCLUSION

Wherefore, for the foregoing reasons, movants respectfully request that the Court enter an Order allowing Proposed Amici States to appear and file without local counsel. A proposed order is attached to this motion.

Dated: June 11, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
LAURA FAER
Supervising Deputy Attorney
General
CHRISTINA RIEHL
EDWARD NUGENT
Deputy Attorneys General

/s/ Nimrod Pitsker Elias
NIMROD PITSKER ELIAS
(251634CA)
Deputy Attorney General
*Attorneys for Amicus Curiae
State of California*

DECLARATION OF NIMROD PITSKER ELIAS

I, Nimrod Pitsker Elias, declare:

1. I am an attorney at law in good standing, admitted to the Northern District of Texas. I am also an attorney at law in good standing licensed to practice in all Courts of the State of California.

2. I have been appointed and currently serve as a Deputy Attorney General in the Office of the Attorney General, State of California. In this capacity, I have been assigned to appear on behalf of the Proposed Amici States in this matter. I have personal knowledge of the facts and would testify competently to those set forth herein.

3. I live within 25 miles of two major airports: Oakland and San Francisco International airports, both of which have direct approximate three-hour and thirty minute flights to the Dallas/Fort Worth International Airport. I certify to the Court that I will be available for hearings called on short notice, including emergency hearings that may need to be held within twenty-four hours notice.

4. Each of the Deputy Attorneys General assigned to this case, including myself, have familiarized themselves with the Local Rules of the Northern District of Texas, and we are each prepared to abide by its rules and procedures.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was signed on this date in Berkeley, California.

Executed on this 11th day of June, 2024, at Berkeley, California.

/s/ Nimrod Pitsker Elias
NIMROD PITSKER ELIAS
(251634CA)
Deputy Attorney General

CERTIFICATE OF CONFERENCE

I hereby certify that Deputy Attorney General Christina Riehl conferred with Timothy Davis, counsel for Plaintiff, and Brian Netter, counsel for Defendants, concerning the Proposed Amici States' Motion for Leave to Appear and File Without Local Counsel. Mr. Davis and Mr. Netter indicated that they have no opposition to the Motion for Leave to Appear and File without Local Counsel.

Dated: June 11, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
LAURA L. FAER
Supervising Deputy Attorney General
CHRISTINA RIEHL
EDWARD NUGENT
Deputy Attorneys General

/s/ Nimrod Pitsker Elias
NIMROD PITSKER ELIAS (251634CA)
Deputy Attorney General
Attorneys for Amicus Curiae
State of California

CERTIFICATE OF SERVICE

I certify that this document was filed through the Court's CM/ECF system, which served it upon all counsel of record.

/s/ Nimrod Pitsker Elias

NIMROD PITSKER ELIAS (251634CA)